



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

Via Email and First Class Mail

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**JUN - 1 2016**

RE: MUR 6566  
Lisa Wilson-Foley  
Lisa Wilson-Foley for Congress and Lisa  
Wilson-Foley in her official capacity as  
treasurer

Dear Mr. Proto:

On May 3, 2012, and again on July 10, 2012, the Federal Election Commission (the "Commission") notified your client, Lisa Wilson-Foley for Congress and its treasurer (the "Committee"), of complaints alleging violations of the Federal Election Campaign Act of 1971, as amended (the "Act"). On July 22, 2015, the Commission notified you that it had found reason to believe that the Committee knowingly and willfully violated 52 U.S.C. §§ 30104(b) and 30116(a) by accepting and failing to report a \$35,000 excessive in-kind contribution from Brian Foley in the form of payments to former Connecticut Governor John Rowland. On November 5, 2015, the Commission notified your other client, Lisa Wilson-Foley, of information indicating that she may have violated the Act, and provided her with the available information and copies of the complaints giving rise to this matter.

After reviewing the available information and your clients' joint response, the Commission, on May 24, 2016, found reason to believe that Lisa Wilson-Foley violated 52 U.S.C. § 30116(f) and that the Committee violated 52 U.S.C. §§ 30104(b) and 30116(f) by accepting a \$500,000 excessive contribution from Brian Foley. Enclosed is the Factual and Legal Analysis that sets forth the basis for the Commission's determination.

Please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519.

In order to expedite the resolution of this matter, the Commission has authorized the Office of General Counsel to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Pre-probable cause conciliation is not mandated by the Act or the Commission's regulations, but is a voluntary step in the enforcement process that the Commission is offering to your clients as a

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way to resolve this matter at an early stage and without the need for briefing the issue of whether or not the Commission should find probable cause to believe that your clients violated the law.

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If your clients are interested in engaging in pre-probable cause conciliation, please contact Meredith McCoy, the attorney assigned to this matter, at (202) 694-1609, within 7 days of receipt of this letter. During conciliation, you may submit any factual or legal materials that you believe are relevant to the resolution of this matter. Because the Commission only enters into pre-probable cause conciliation in matters that it believes have a reasonable opportunity for settlement, we may proceed to the next step in the enforcement process if a mutually acceptable conciliation agreement cannot be reached within 60 days. *See* 52 U.S.C. § 30109(a); 11 C.F.R. Part 111 (Subpart A). Conversely, if your clients are not interested in pre-probable cause conciliation, the Commission may conduct formal discovery in this matter or proceed to the next step in the enforcement process. Please note that once the Commission enters the next step in the enforcement process, it may decline to engage in further settlement discussions until after making a probable cause finding.

In the meantime, this matter will remain confidential in accordance with 52 U.S.C. § 30109(a)(4)(B) and 30109(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. Please be advised that, although the Commission cannot disclose information regarding an investigation to the public, it may share information on a confidential basis with other law enforcement agencies.<sup>1</sup>

We look forward to your response.

On behalf of the Commission,



Matthew Petersen  
Chairman

Enclosures  
Factual and Legal Analysis

<sup>1</sup> The Commission has the statutory authority to refer knowing and willful violations of the Act to the U.S. Department of Justice for potential criminal prosecution, 52 U.S.C. § 30109(a)(5)(C), and to report information regarding violations of law not within its jurisdiction to appropriate law enforcement authorities. *Id.* § 30107(a)(9).

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 RESPONDENT: Lisa Wilson-Foley and  
4 Lisa Wilson-Foley for Congress and  
5 Lisa Wilson-Foley in her official  
6 capacity as treasurer

MUR: 6566

7 **I. INTRODUCTION**

8 For the reasons discussed below, the Commission finds reason to believe Lisa Wilson-  
9 Foley, in her individual capacity, and Lisa Wilson-Foley for Congress and Lisa Wilson-Foley in  
10 her official capacity as treasurer ("the Committee")<sup>1</sup> violated 52 U.S.C. § 30116(f) by accepting  
11 \$500,000 from Brian Foley, her spouse, and that the Committee also violated 52 U.S.C.  
12 § 30104(b) by failing to properly report the receipt.

13 **II. BACKGROUND**

14 In the course of related criminal proceedings, Brian Foley testified at the trial of former  
15 Connecticut Governor John Rowland.<sup>2</sup> Based on Foley's testimony and additional information  
16 available to the Commission, as discussed in detail below, the Commission notified Wilson-  
17 Foley as a respondent in her individual capacity and gave her the opportunity to respond.<sup>3</sup>  
18 Wilson-Foley responded after a substantial extension, for which she provided an agreement  
19 tolling the statute of limitations.<sup>4</sup> Previously, at the conclusion of the criminal proceedings, the  
20 Commission found reason to believe the Committee knowingly and willfully violated 52 U.S.C.

<sup>1</sup> Wilson-Foley was a candidate for the U.S. House of Representatives in Connecticut's Fifth Congressional District in 2012. Wilson-Foley lost the August 14, 2012 Republican primary election. Wilson-Foley was named as treasurer of the Committee on April 14, 2014. See Amended Statement of Org., Lisa Wilson-Foley for Congress (Apr. 14, 2014).

<sup>2</sup> *United States v. Rowland*, No. 3:14-CR-79 (D. Conn. Sept. 5, 2014).

<sup>3</sup> Notification to Lisa Wilson-Foley, MUR 6566 (Nov. 5, 2015).

<sup>4</sup> Consent to Extend the Time to Institute a Civil Law Enf. Suit, MUR 6566 (Wilson-Foley) (Dec. 20, 2015) (tolling the statute of limitations for 120 calendar days); Consent to Extend the Time to Institute a Civil Law Enf. Suit, MUR 6566 (Lisa Wilson-Foley for Congress) (Feb. 16, 2016) (same).

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1 §§ 30116(f) and 30104(b) by accepting and failing to report excessive in-kind contributions of  
2 \$35,000 in payments to Rowland for work on Wilson-Foley's campaign during the 2012 election  
3 cycle.<sup>5</sup>

4 **III. FACTUAL AND LEGAL ANALYSIS**

5 During the Rowland trial, Brian Foley testified that he made a \$500,000 gift to his wife  
6 for use in her campaign. On direct examination, Foley testified, "I understood I could give my  
7 wife money directly which she could contribute, but in terms of my contribution to the  
8 campaign, I understood I was maxed out at \$7,500."<sup>6</sup> During cross-examination, he continued:

9 A. I told Lisa when she was going to run for Congress that I would  
10 contribute half a million dollars. . . . \$500,000.

11 Q. I have no interest in probing into —

12 A. No, it's okay.

13 Q. Your private — I'm about to ask a question and I'm prefacing it by  
14 saying I'm not interested in your private financial affairs with your  
15 wife. But are there joint assets?

16 A. No.

17 Q. So they're separate.

18 A. Our assets are separate, yeah.

19 Q. So you were going to contribute a half a million bucks?

20 A. I did. I put [\$]500,000 into Lisa's campaign for Congress.

21 Q. And did Lisa make a substantial contribution on her own?

22 A. I think she put in about \$500,000 as well.

23 Q. In what form?

24 A. Just wrote checks to the campaign. And my checks went to Lisa  
25 and then she put my money into the campaign.<sup>7</sup>

26 The Committee's disclosure reports to the Commission show that, to date, Wilson-Foley has  
27 made contributions to the Committee totaling \$47,756 and loans totaling \$960,000.<sup>8</sup>

<sup>5</sup> Factual and Legal Analysis (Lisa Wilson-Foley for Congress), MUR 6566 (Jul. 20, 2015).

<sup>6</sup> Transcript of Record at 179-80, *United States v. Rowland*, No. 3:14-CR-79 (D. Conn. Sept. 5, 2014) (Doc. 158) ("Rowland Transcript").

<sup>7</sup> *Id.* at 228-29.

<sup>8</sup> Wilson-Foley made her first loan to the Committee on April 1, 2011; she made her most recent contribution on December 16, 2014.

1 In response to the Commission's notifications, Wilson-Foley asserts that there is no  
2 information to show that "Lisa Wilson-Foley's contributions to her own campaign came solely  
3 and exclusively out of funds provided to her by Foley."<sup>9</sup> She further cites Connecticut law for  
4 the proposition that "where marital efforts were expended to maintain or enhance individual  
5 accounts, and where portion(s) of individual accounts are used for marital purposes, the accounts  
6 are marital assets" and state that this entitles Wilson-Foley "as much right to their use as Foley  
7 himself."<sup>10</sup> However, Wilson-Foley has not provided any additional information about the  
8 source of the \$500,000 or any information to indicate that these assets were "enhance[d]" by  
9 "marital efforts" or "used for marital purposes."

10 In 2012, the Act prohibited persons from making contributions to any candidate and his  
11 or her authorized political committee with respect to any election for federal office which, in the  
12 aggregate, exceeded \$2,500.<sup>11</sup> The term "contribution" includes "any gift, subscription, loan,  
13 advance, or deposit of money or anything of value made by any person for the purpose of  
14 influencing any election for Federal office."<sup>12</sup>

15 Federal candidates may make unlimited contributions from their "personal funds" to their  
16 campaigns.<sup>13</sup> "Personal funds" of a candidate means the sum of all of the following: (a) assets;  
17 (b) income; and (c) jointly owned assets.<sup>14</sup> A candidate's assets are amounts derived from any

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<sup>9</sup> Wilson-Foley Resp. ¶ 6 (Feb. 16, 2016).

<sup>10</sup> *Id.* ¶ 6 (citing *Murphy v. Murphy*, 2001 WL 1420600 (Conn. Sup. Ct. 2001)).

<sup>11</sup> 52 U.S.C. § 30116(a)(1)(A).

<sup>12</sup> *Id.* § 30101(8)(A)(i).

<sup>13</sup> 11 C.F.R. § 110.10.

<sup>14</sup> *Id.* § 100.33. A candidate's income consists of income received during the current election cycle, of the candidate, including: salary and other earned income that the candidate earns from bona fide employment; income from the candidate's stocks or other investments including interest, dividends, or proceeds from the sale or liquidation of such stocks or investments; bequests to the candidate; income from trusts established before the

1 asset that, under applicable state law, at the time the individual became a candidate, the candidate  
2 had legal right of access to or control over, and with respect to which the candidate had legal and  
3 rightful title or an equitable interest.<sup>15</sup> A candidate's jointly owned assets are amounts derived  
4 from a portion of assets that are owned jointly by the candidate and the candidate's spouse as  
5 follows: the portion of assets that is equal to the candidate's share of the asset under the  
6 instrument of ownership or conveyance; or if no specific share is indicated by an instrument of  
7 ownership or conveyance, the value of one-half of the property.<sup>16</sup>

8 Although federal candidates may contribute unlimited personal funds to their campaigns,  
9 their family members are subject to the Act's contribution limits.<sup>17</sup> The Commission has  
10 enforced the contribution limit against family members who made excessive contributions to the  
11 candidate's campaign in the form of asset transfers to the candidate.<sup>18</sup>

12 Here, Foley testified at trial that he and his wife have separate assets and that he  
13 transferred \$500,000 of his own assets to her to contribute to her campaign.<sup>19</sup> He testified that

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beginning of the election cycle; income from trusts established by bequest after the beginning of the election cycle of which the candidate is the beneficiary; gifts of a personal nature that had been customarily received by the candidate prior to the beginning of the election cycle; and proceeds from lotteries and similar games of chance. *Id.* § 100.33(b).

<sup>15</sup> *Id.* § 100.33(a).

<sup>16</sup> *Id.* § 100.33(c).

<sup>17</sup> The United States Supreme Court has upheld the constitutionality of the Act's contribution limits as applied to members of a candidate's family. *See Buckley v. Valeo*, 424 U.S. 1, 53 n.59 ("Although the risk of improper influence is somewhat diminished in the case of large contributions from immediate family members, we cannot say that the danger is sufficiently reduced to bar Congress from subjecting family members to the same limitations as nonfamily members.").

<sup>18</sup> *See, e.g.*, MUR 6417 (Huffman) (finding reason to believe a candidate and his spouse violated 52 U.S.C. § 30116(a) and (f) by transferring \$900,000 from the spouse's separately-held trust account to the couple's joint account to be loaned to the candidate's campaign and transferring \$400,000 from the spouse's separately-held trust account directly to the candidate's campaign); MUR 5334 (O'Grady) (finding reason to believe a candidate and her spouse violated 52 U.S.C. § 30116(a) and (f) by making and accepting a \$25,000 loan from the spouse's separate business account).

<sup>19</sup> *Rowland Transcript* at 228-29.

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1 Wilson-Foley used that money, along with approximately \$500,000 of her own separate assets,  
2 to write checks to her campaign.<sup>20</sup> Indeed, the Committee's disclosure reports show that, to date,  
3 Wilson-Foley has made contributions to the Committee totaling \$47,756.20 and loans totaling  
4 \$960,000.<sup>21</sup>

5 Because it appears Foley transferred funds to Wilson-Foley after she became a candidate,  
6 the transferred funds do not qualify as Wilson-Foley's assets under 11 C.F.R. § 100.33(a).  
7 Because the funds he transferred were separate and not held in a joint account, the transferred  
8 funds were not jointly owned assets under 11 C.F.R. § 100.33(c).

9 Given Foley's testimony that he made the contribution from separately held assets and  
10 that "[his] checks went to Lisa and then she put [his] money into the campaign,"<sup>22</sup> the \$500,000  
11 at issue does not appear to qualify as Wilson-Foley's personal funds. Instead, Foley's  
12 conveyance appears to be an excessive contribution in violation of the Act. Under these  
13 circumstances, Wilson-Foley and, through her, the Committee, appear to have accepted the  
14 excessive contribution, and failed to appropriately report it. Accordingly, the Commission finds

<sup>20</sup> *Id.* ("[M]y checks went to Lisa and then she put my money into the campaign").

<sup>21</sup> The Committee has not repaid any of Wilson-Foley's loans.

<sup>22</sup> *Rowland* Transcript at 230. In her response, Wilson-Foley asserts that Connecticut law considers individual accounts to be marital assets where "portion(s) of individual accounts are used for marital purposes." Wilson-Foley Resp. at ¶ 6 (citing *Murphy v. Murphy*, 2001 WL 1420600 (Conn. Sup. Ct. 2001)).

Connecticut law appears to allow courts broad discretion in classifying and reallocating the property of spouses, allowing courts to consider numerous factors, including the contribution of each party in the acquisition, preservation or appreciation in value of their respective estates. CONN. GEN. STAT. § 46b-81 ("At the time of entering a decree annulling or dissolving a marriage...the Superior Court may assign to either the husband or wife all or any part of the estate of the other"). However, in granting broad discretion, the state does not appear to mandate any particular classification. *See, e.g., De Repentigny v. De Repentigny*, 121 Conn. App. 451, 461-62 (Conn. App. 2010) ("[A]lthough both parties made contributions to the acquisition, maintenance and reservation of this asset, the evidence clearly supports a finding that the defendant's contribution was significantly greater...we will not second-guess the court's decision to grant ownership of [the asset] to the defendant."). Regardless, the available information does not support the conclusion that Foley and Wilson-Foley indeed shared in their use and maintenance of the account in question. To the contrary, Foley testified at trial that their assets are separate and that his \$500,000 conveyance to Wilson-Foley came from his separate account.

- 1 reason to believe Lisa Wilson-Foley and the Committee violated 52 U.S.C. § 30116(f), and the
- 2 Committee violated 52 U.S.C. § 30104(b).

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